

HOUSE BILL No. 2057

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-5.1.

Synopsis: Regulation of sports agents. Requires a person who acts as a sports agent in Indiana to hold a sports agent permit issued by the secretary of state. Allows the secretary of state to issue a sports agent permit to a person who meets certain requirements, including the posting of a bond. Makes acting as a sports agent without a sports agent permit a Class A misdemeanor. Specifies certain requirements for an agent contract between a sports agent and a student athlete. Requires a sports agent who enters into an agent contract with a student athlete to notify the student athlete's institution within the time required by the law criminalizing the failure to disclose recruitment. Requires a student athlete who enters into an agent contract to notify the student athlete's institution within 72 hours after executing the contract and before the student athlete participates in or practices for an intercollegiate athletic competition. Allows a student athlete to rescind an agent contract under certain circumstances. Specifies conditions under which a sports agent permit may be revoked or suspended. Provides causes of action under which an institution of higher learning may recover damages caused by a sports agent or a student athlete, or both.

Effective: January 1, 2002.

Klinker, Scholer, Summers, Duncan

January 17, 2001, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 2057

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-5.1 IS ADDED TO THE INDIANA CODE AS A
2 **NEW ARTICLE TO READ AS FOLLOWS** [EFFECTIVE JANUARY
3 1, 2002]:

ARTICLE 5.1. REGULATION OF SPORTS AGENTS

Chapter 1. Applicability and General Provisions

6 **Sec. 1. This article applies to a student athlete during the**
7 **student athlete's period of:**

8 **(1) eligibility; and**

9 **(2) rescindability.**

10 **Sec. 2. This article does not apply to a student athlete who is**
11 **ineligible to participate in a particular intercollegiate sport with**
12 **respect to that particular intercollegiate sport.**

13 **Sec. 3. This article does not do the following:**

14 **(1) Prevent a student athlete from relinquishing eligibility to**
15 **compete in intercollegiate athletics and then entering into an**
16 **agent contract.**

17 **(2) Impair the validity of an agent contract entered into by a**



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student athlete before January 1, 2002.

Sec. 4. The secretary of state shall adopt rules to implement this article.

Chapter 2. Definitions

Sec. 1. Except as otherwise provided, the definitions in this chapter apply throughout this article.

Sec. 2. "Agent contract" means any of the following:

(1) An agreement in which a student athlete authorizes a sports agent to represent the student athlete in the marketing of the student athlete's athletic ability or athletic reputation.

(2) An agreement to make a loan or an advance of money that is related to a student athlete pursuing a professional sports career.

(3) An agreement to provide services or material goods that are related to a student athlete pursuing a professional sports career.

Sec. 3. "Contact" means direct or indirect communication between a:

(1) sports agent; and

(2) student athlete;

to execute or solicit the execution of an agent contract.

Sec. 4. "Institution" means a public or private institution of higher learning in Indiana.

Sec. 5. "Period of eligibility" refers to the period:

(1) beginning with a student athlete's enrollment at an institution; and

(2) ending with the last intercollegiate athletic competition in which the student athlete is permitted to compete under the rules of a national intercollegiate athletic association that governs an institution's intercollegiate athletic competition.

The term includes a period during which a student athlete would otherwise compete in an intercollegiate athletic competition, except for being disqualified for violating the rules of an association described in subdivision (2).

Sec. 6. "Period of rescindability" means the twenty (20) days following the expiration of a student athlete's period of eligibility.

Sec. 7. "Person" means an individual, a company, a corporation, an association, a partnership, or other legal entity. The term does not include a governmental agency.

Sec. 8. "Sports agent" means a person or the person's agent who, for a fee, directly or indirectly recruits or solicits a student athlete to enter into an agent contract. The term includes an

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attorney who acts as a sports agent for a student athlete but does not include an attorney who acts in the attorney's capacity as legal counsel for a student athlete in advising the student athlete about contractual matters involving a career in professional sports.

Sec. 9. "Student athlete" means an individual residing within or outside Indiana who:

- (1) participates in an institution's intercollegiate athletic program;
- (2) formerly participated in an institution's intercollegiate athletic program and is in a period of rescindability; or
- (3) has informed an institution in writing of the individual's intent to participate at a future date in the institution's intercollegiate athletic program.

Chapter 3. Requirements for Sports Agent Permit

Sec. 1. A person who acts or attempts to act as a sports agent in Indiana must hold a sports agent permit issued by the secretary of state under this chapter.

Sec. 2. (a) To obtain a sports agent permit under this chapter, a person must apply to the secretary of state on an application form designed and provided by the secretary of state.

(b) The applicant must sign the application form.

(c) The application form must require the applicant to affirm, under penalty of perjury, the following:

- (1) That the applicant is at least eighteen (18) years of age.
- (2) That the applicant has paid a nonrefundable permit fee of two hundred fifty dollars (\$250) to the secretary of state.
- (3) That the applicant has not in any jurisdiction within the five (5) years preceding the date of the application:
 - (A) been convicted of;
 - (B) been found guilty of; or
 - (C) entered a plea of nolo contendere for;
 a crime that relates to the applicant's practice as a sports agent.

(4) That the applicant has not had:

- (A) a sports agent license or permit suspended or revoked in another jurisdiction for a violation of the law of that jurisdiction; or
- (B) a civil judgment entered against the applicant for damages caused to an institution of higher learning located within or outside Indiana resulting from a violation of the sports agent law of the jurisdiction in which the institution is located.

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(5) That the applicant has not engaged in conduct that resulted in a penalty or sanction imposed against a college or university by an intercollegiate athletic association or athletic conference governing the college or university, regardless of whether criminal, civil, or administrative actions were commenced against the applicant.

(6) That the applicant has posted with the secretary of state a fifteen thousand dollar (\$15,000) surety bond issued by an insurance company authorized to do business in Indiana.

Sec. 3. The bond described in section 2(c)(6) of this chapter must meet the following conditions:

(1) The bond must:

(A) be in favor of Indiana for the use and benefit of; and

(B) cover reasonable costs and attorney's fees of;

a student athlete who is or an institution that is injured or damaged as a result of an act or omission by a sports agent acting under a permit issued under this chapter.

(2) The bond must provide that a sports agent is responsible for the acts or omissions of an agent acting under the sports agent's supervision or authority.

(3) The bond must cover all acts or omissions committed while the sports agent:

(A) holds a permit issued under this chapter; and

(B) conducts business under the permit in Indiana.

Sec. 4. (a) Except as provided in subsection (b), upon:

(1) verification of the affirmations described in section 2 of this chapter; and

(2) the posting of the bond that meets the requirements provided in section 3 of this chapter;

the secretary of state shall issue a sports agent permit to the person submitting an application under section 2 of this chapter.

(b) If the secretary of state finds that:

(1) the requirements of sections 2 and 3 of this chapter have not been met; or

(2) the applicant has provided false or inaccurate information on the application;

the secretary of state may deny the permit.

Sec. 5. If the secretary of state determines that:

(1) a person possesses a valid permit or license from another jurisdiction to act as a sports agent; and

(2) the jurisdiction issuing the permit or license imposes substantially equivalent requirements on applicants for the

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1 permit or license as are imposed on applicants for an Indiana
 2 permit;
 3 the secretary of state may issue a sports agent permit to the person
 4 upon the payment of the fee described in section 2(c)(2) of this
 5 chapter and the posting of the bond described in section 2(c)(6) of
 6 this chapter.

7 Sec. 6. A permit issued to a sports agent is not transferable.

8 Sec. 7. An agent contract between a:

9 (1) student athlete; and

10 (2) person that does not have a sports agent permit issued
 11 under this chapter;
 12 is void.

13 Sec. 8. A person who knowingly or intentionally acts as a sports
 14 agent without a sports agent permit commits a Class A
 15 misdemeanor.

16 Chapter 4. Agent Contracts and Penalties

17 Sec. 1. An agent contract between a sports agent and a student
 18 athlete must:

19 (1) be in writing;

20 (2) be signed by the sports agent and the student athlete in the
 21 presence of a notary public, who must notarize the agent
 22 contract;

23 (3) include the sports agent's address to which notices may be
 24 sent; and

25 (4) state the fee or other remuneration to be paid by the
 26 student athlete to the sports agent.

27 Sec. 2. If an agent contract is executed, a sports agent shall
 28 provide the student athlete with a signed and notarized copy of the
 29 agent contract.

30 Sec. 3. (a) Within the time prescribed under IC 35-46-4-4, a
 31 sports agent shall give written notice of an agent contract to the
 32 head of the athletic department for the institution in which the
 33 student athlete is enrolled.

34 (b) If an agent contract is executed, a student athlete who enters
 35 into the agent contract shall give written notice of the agent
 36 contract to the president of, or head of the athletic department for,
 37 the institution in which the student athlete is enrolled.

38 (c) The student athlete shall give the notice required under
 39 subsection (b) before any of the following occurs:

40 (1) Seventy-two (72) hours have elapsed since the student
 41 athlete signed the agent contract.

42 (2) The student athlete practices for an intercollegiate athletic

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(3) The student athlete participates in an intercollegiate athletic event.

Sec. 4. The sports agent's written notice required under section 3 of this chapter must be sent by registered or certified mail.

Sec. 5. A student athlete's failure to provide notice under section 3(b) of this chapter may subject the student athlete to disciplinary action under the student athlete's institution's rules for student conduct.

Sec. 6. If notification under section 3(b) of this chapter is not received in the time required by section 3(c) of this chapter, the student athlete's eligibility period expires.

Sec. 7. It is unlawful for a sports agent to knowingly or intentionally offer, give, or loan anything of value to:

(1) a student athlete; or

(2) an individual acting on behalf of the student athlete; during the student athlete's period of eligibility for the purpose of inducing the student athlete to enter into an agent contract.

Sec. 8. If a sports agent violates this chapter while executing an agent contract, the agent contract is void.

Sec. 9. A sports agent who knowingly or intentionally violates this chapter commits a Class D felony.

Chapter 5. Permit Display; Maintenance of Business Records

Sec. 1. A sports agent shall post and conspicuously display the sports agent's permit or a legible copy of the sports agent's permit in each office where the sports agent conducts business as a sports agent.

Sec. 2. A sports agent who holds an active permit and engages in business as a sports agent shall establish and maintain complete financial and business records for at least four (4) years after the date of the entry.

Sec. 3. A sports agent shall provide the secretary of state with access during normal business hours to inspect and examine financial or business records required to be kept under section 2 of this chapter.

Sec. 4. The secretary of state may exercise subpoena powers to obtain the financial and business records of a sports agent.

Sec. 5. If a sports agent violates this chapter while executing an agent contract, the agent contract is void.

Chapter 6. Rescindability of an Agent Contract by a Student Athlete

Sec. 1. A student athlete is entitled to rescind an agent contract

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by giving written notice to the sports agent of the intent to rescind. The notice must be given not more than twenty (20) calendar days after the date that the last of the following occurs:

(1) Written notification from the student athlete about the agent contract is received by the president or the athletic director of the student athlete's institution.

(2) Written notification from the sports agent about the agent contract is received by the athletic director of the student athlete's institution.

Sec. 2. A student athlete, while in a period of rescindability, may rescind a contract executed during the period of rescindability.

Sec. 3. The right to rescind provided under sections 1 and 2 of this chapter may not be waived. An attempted waiver of the right to rescind is ineffective.

Sec. 4. Money, services, or anything of value given by a sports agent to a student athlete may be retained by the student athlete as a gift if the student athlete rescinds an agent contract under this chapter.

Chapter 7. Revocation or Suspension of a Sports Agent Permit

Sec. 1. Commission of at least one (1) of the following acts is grounds for the secretary of state to revoke or suspend a sports agent's permit:

(1) Violating a law relating to the permit holder's practice as a sports agent, including a violation of this article.

(2) Failing to account for or to pay, within thirty (30) days, assets belonging to another that have come into the control of the sports agent in the course of conducting business as a sports agent.

(3) Engaging in conduct while acting as a sports agent that demonstrates bad faith or dishonesty.

(4) Commingling money or property of another person with the sports agent's money or property and failing to maintain a separate trust or escrow account in an insured bank or savings and loan association located in Indiana in which all proceeds received for another person through the sports agent are deposited.

(5) Accepting as a client a student athlete:

(A) referred by; and

(B) in exchange for consideration made to; an employee of or a coach for an institution.

(6) Offering anything of value to a person, including a family member of the student athlete, to induce a student athlete to

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enter into an agent contract with the sports agent. However, negotiations regarding the sports agent's fee may not be considered an inducement.

(7) Knowingly providing financial benefit from the permit holder's business as a sports agent to another sports agent whose license or permit to practice as a sports agent is suspended or has been revoked within the previous five (5) years.

(8) Committing mismanagement or misconduct as a sports agent that causes financial harm to a student athlete or an institution.

(9) Failing to include the sports agent's name and permit number in advertising relating to business as a sports agent.

(10) Publishing or causing to be published false or misleading information or advertisements, or giving false information or making false promises to a student athlete concerning:

(A) employment; or

(B) counseling about or making of an investment or other financial decision by a sports agent on behalf of a student athlete.

(11) Violating or aiding and abetting another person to violate the rules of an athletic conference or intercollegiate athletic association governing a student athlete or a student athlete's institution.

(12) Having contact with a student athlete that is prohibited by this article.

(13) Postdating an agent contract.

(14) Having a sports agent permit successfully acted against by a professional athletic club or association.

(15) Refusing to provide the secretary of state access to financial and business records as required under IC 4-5.1-5-3.

Sec. 2. A sports agent permit may not be suspended or revoked because the sports agent:

(1) contacts a student athlete by sending written materials, if the sports agent simultaneously sends an identical copy of the written materials to the athletic director of the institution:

(A) in which the student athlete is enrolled; or

(B) to which the student athlete has provided a written intent to participate in intercollegiate athletics; or

(2) contacts a student athlete, if the student athlete initiated the contact with the sports agent and the sports agent gives a written notice of the contact to the institution:



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(A) in which the student athlete is enrolled; or

(B) to which the student athlete has provided a written intent to participate in intercollegiate athletics.

Sec. 3. (a) An act or omission listed under section 1 of this chapter may be brought to the attention of the secretary of state by written complaint filed by an institution or a student athlete aggrieved by the act or omission.

(b) If the secretary of state finds from a complaint filed under subsection (a) that there is reasonable cause to believe that the act or omission occurred, the secretary of state shall commence a sports agent permit revocation or suspension hearing.

(c) A hearing held under this section must be conducted in the same manner as hearings are conducted under IC 4-21.5.

Chapter 8. Causes of Action

Sec. 1. A person who acts or attempts to act as a sports agent, regardless of whether the person has a sports agent permit:

(1) consents to Indiana jurisdiction; and

(2) appoints the secretary of state as the person's agent to accept service of process in a civil action related to the person's doing business as a sports agent.

Sec. 2. An institution has a cause of action for damages against a person who violates this article. An institution may seek equitable relief to prevent or minimize harm that arises from an act or omission that is or would be a violation of this article.

Sec. 3. If an act or omission in violation of this article by a student athlete or a sports agent results in an institution being penalized, disqualified, or suspended from participation in intercollegiate athletics by a national intercollegiate athletic association or by an intercollegiate athletic conference, the institution may recover against the student athlete or the sports agent, or both, for the institution's:

(1) lost revenue from media coverage of an intercollegiate athletic competition;

(2) lost ticket sales for a regular season or post-season athletic event;

(3) loss of the right to grant an athletic scholarship;

(4) loss of the right to recruit an athlete;

(5) disqualification from participating in post-season athletic competition;

(6) lost proceeds from a revenue sharing agreement or arrangement between institutions in an intercollegiate athletic conference;

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- (7) forfeiture of an intercollegiate athletic contest; or
- (8) other adverse financial impact.

Sec. 4. If a sports agent's act or omission allegedly causes a student athlete or an institution harm, the secretary of state shall conduct a hearing in the same manner as hearings are conducted under IC 4-21.5 to determine whether:

- (1) harm has been caused by the sports agent; and
- (2) the institution or the student athlete, or both, have sustained financial losses recoverable under the bond posted under IC 4-5.1-3-2.

Sec. 5. (a) After a hearing held under section 4 of this chapter, the secretary of state shall, if appropriate, distribute the proceeds of the bond posted under IC 4-5.1-3-2 to the parties sustaining losses, to the extent of those losses.

(b) Actions upon the bond and the right to distribute proceeds of the bond extend solely to the secretary of state. However, if the secretary of state has not initiated an action upon the bond by scheduling and holding a hearing not later than thirty (30) days after a written request to do so, a claimant may initiate an action in the circuit court of Marion County to require the secretary of state to take action.

Sec. 6. If, after a hearing held under section 4 of this chapter, the secretary of state determines that the claims of the parties who have sustained financial losses recoverable under the sports agent's bond exceed the amount of the bond proceeds, the proceeds shall be prorated among the parties according to the ratio that each party's loss bears to the total amount of all proven losses.

Sec. 7. The determination by the secretary of state after a hearing held under section 4 of this chapter as to:

- (1) liability under the bond; and
- (2) the amount distributed under the bond;

is binding upon the principal and surety of the bond.

Sec. 8. The existence of a bond under IC 4-5.1-3-2 and the bond recovery procedure do not affect or alter another right or remedy that a person may have under applicable law. However, a recovery under a bond posted under IC 4-5.1-3-2 must offset liability assessed against a sports agent in another recovery under this chapter.

Sec. 9. In addition to the damages listed under section 3 of this chapter, an institution that prevails in an action brought under this article may recover:

- (1) punitive damages;

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- (2) court costs;
- (3) reasonable attorney's fees; and
- (4) damages for a violation of this article that results in the ineligibility of a student athlete to compete, in an amount equal to three (3) times the value of the athletic scholarship furnished by the institution to the student athlete during the student athlete's period of eligibility.

Sec. 10. An institution or a student athlete must:

- (1) commence an action under this chapter; or
- (2) petition the secretary of state for a hearing under section 4 of this chapter;

not later than three (3) years after the date damages to the institution or student athlete resulting from a violation of this article are discovered or reasonably should have been discovered, whichever is sooner.

Sec. 11. If a student athlete and a sports agent are at fault under section 3 of this chapter, the student athlete and the sports agent are jointly and severally liable to an institution for damages awarded to the institution under this chapter.

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